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INTRODUCTORY LECTURE

ON

MEDICAL JURISPRUDENCE.

DELIVERED IN

THE THEATRE OF THE ROYAL DUBLIN SOCIETY,

ON SATURDAY, THE 16TH NOVEMBER, 1839,

BY

THOMAS BRADY, Esq., M. D.,

FELLOW AND PROFESSOR IN THE KING AND QUEEN'S COLLEGE OF  
PHYSICIANS, IRELAND.

DUBLIN:

HODGES & SMITH, COLLEGE-GREEN.

M.DCCC.XXXIX.

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DUBLIN:

PRINTED BY R. GRAISBERRY.

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# INTRODUCTORY LECTURE

ON

## MEDICAL JURISPRUDENCE.

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GENTLEMEN,

I HAVE been often asked since these lectures were announced, what was the meaning of this Course of Medical Jurisprudence, and I have no doubt there are many here to day, who have felt much surprise at finding a Doctor of Medicine appear as a teacher in a School of Law. It is not, however, law I come to teach. Of it I know but little ; no more indeed than every medical practitioner ought to be acquainted with. The object of this Course of Lectures is to communicate such a knowledge of medicine, and its collateral sciences, as is absolutely necessary in the practice of your profession. Questions of the highest interest, in a social point of view, are constantly occurring in our various courts of justice, some affecting the rights of property, some the health and comforts of whole communities, and some the character, the liberty, or the lives of individuals, the determination of which depends almost entirely on evidence derived from the medical sciences. But this, like all evidence, and far more indeed than any other species of evidence, is open to fallacy—partly from the obscure and uncertain nature of the sciences themselves—partly from the carelessness, the incapacity, the ignorance, or the prejudices of the medical witness. It is the duty, as well as the interest of the barrister, to be aware of those sources of error, and prepared when they occur to detect and lay them bare. But if he be not familiar with the grounds on which this evidence rests, and

the various circumstances that impair and weaken its conclusiveness, it is impossible he can have any distinct idea either of its force or its fallacy.

Suppose a charge of infanticide—a crime that from its very nature scarcely admits of any other kind of proof, and which indeed, from the neglect of the study of Medical Jurisprudence in this country, almost always escapes with impunity—what is the medical evidence generally necessary in such a case? First, proof that the child was born alive; second, that its death was the result of criminal violence; and lastly, that the accused was delivered at a period corresponding to the age of the child. These facts are capable of being established in certain cases in the most conclusive manner from an examination of the child and the mother. But this requires much knowledge and skill, and a careless or inexperienced practitioner conducting such an investigation is liable to fall into the greatest errors. Take the first step in the inquiry—proof that the child was born alive, without which the indictment cannot be sustained, and which can scarcely ever be proved by any other than indirect evidence. This evidence is here derived from certain changes that take place in the system of the child, and which are the necessary result of the changed condition of the being, the moment it passes from the womb to an independent state of existence. Thus the lungs, that during the whole period of intra-uterine life lie unmoved in the chest, undergoing no change but the slow one of nutrition and growth, are at once at birth called into a state of activity, which is to continue unceasingly as long as life itself; they are expanded with the air which rushes in from without, and are now for the first time filled with blood, which, abandoning its former course, leaves the channels through which the communication between the child and mother was maintained, dry and shrunken. It is chiefly from the alterations thus produced in the size, aspect, absolute and specific weight of the lungs, that the medical witness draws his conclusions. But changes similar to the most characteristic of these may be produced by other

causes, and it sometimes requires much skill and experience to distinguish between them. Thus the effects of putrefaction, or perhaps of injury, or even of the efforts of a mother to resuscitate a still-born child, may be mistaken by a careless or ignorant observer for the changes in the lungs consequent upon extra-uterine life. Can it be imagined that a barrister, unacquainted with the structure and functions of those organs, and of the changes that occur in both at the time of birth, and who has never witnessed the experiments by which the precise nature of those changes is determined, can be capable of detecting and exposing this ignorance or carelessness? His attempts in such circumstances must prove utter failures. But, indeed, not only must he be incapable of the more difficult task of managing the defence, but also of making such a statement of the case, or eliciting, even from a well informed witness, such a connected chain of evidence as will be sufficient to inform and satisfy a jury. This observation applies with almost equal force to every medico-legal inquiry—whether it be a charge of murder, a question of insanity, or of the insurability of a life. Unless the barrister has sufficient medical knowledge to be able to appreciate the force, or to see the fallaciousness of the medical evidence, the administration of justice can scarcely ever derive any solid advantages from the science of medicine. I believe I pronounce no libel on the members of the bar, when I assert, that, with few exceptions, they come to the Profession, both in England and here, and grow old in it, without the knowledge necessary to manage medico-legal inquiries. And hence it is that such cases, instead of becoming precedents of the triumph of scientific skill over the dark arts of the assassin, or the schemes of the fraudulent, are little better than a kind of chance-medley scuffle, in which some fortunate blow decides the victory. Exceptions, no doubt, there are in both countries, but especially in England, where some members of the bar have at all times paid attention to the subject. Mr. Justice Garrow, for example, Mr. Amos, and others, had even attended medical lectures. Nor will it be con-

sidered invidious to name one at home, whose early death permitted him to do little more than give a promise of what he might have in time effected, but who, had he lived, would probably have excited a taste for medico-legal studies amongst the members of our bar—I allude to Mr. John Smith, who, by the notes on different medico-legal questions with which he enriched the valuable treatise of Dr. Evory Kennedy on the Signs of Pregnancy, rendered that work so complete, that it has become in these countries and in America the manual both of medical men and of barristers. I may add, as a proof of the advantages society might derive from the union of medical and legal knowledge in the improvement of the laws, that it was probably in a great degree owing to the forcible manner in which the absurdity of the old law of criminal abortion (which varied the crime according as the woman was or was not *quick* with child) was pointed out in this work, that the law was made, what it now is, consistent with science, with justice, and humanity.

The above are, however, rare instances, and in general it is quite otherwise ; so that even in cases of great importance, when medical men are employed to furnish views and arguments upon the medical points of the case, the barrister is frequently unable to make use of them, from the want of some previous medical information. Thus, in a case which has lately excited much interest in the North of England, the trial of Bolam; the manager of a saving bank at Newcastle, for the murder of Millie, one of the clerks, the question of his guilt or innocence may be said to have turned on the medical evidence. [Dr. Brady here briefly detailed the facts of the case, and continued :]—An able physician, Dr. Lynch of Newcastle, had prepared a view of the medical part of the case, which was utterly inconsistent with the account given by the prisoner, and the defence set up for him ; but “the leading counsel for the prosecution” (to use the language of an eye-witness) “not being prepared for the scientific questions, skipped them ; and Mr. Dundas, being evidently well grounded in the medical points, availed himself of the deficiency in



the opposite counsel, and forced his views of them on the attention of the court, uncombated, to the benefit of the prisoner."

It is from a belief that the members of the bar must feel and be anxious to remedy this deficiency—must be anxious to avail themselves of an opportunity of acquiring information so useful and necessary in the practice of their Profession, and so essential for the just administration of the laws, that this course of lectures has been undertaken. I confess I approach this duty with much apprehension and anxiety; for though I am accustomed to teach the subject as it is taught in our medical schools, I feel it will be necessary to adopt here a very different course; and as this is, I believe, the first attempt to give a course of Medical Jurisprudence to the bar alone, it has all the difficulty and the danger of novelty. Besides, even in addressing the members of my own Profession, who come prepared by long previous study, the task of the teacher is by no means easy; for while the subject is at once the most extensive and most varied of all the courses of medical education, it requires the most minute accuracy and the utmost precision. But few, perhaps, are fully aware how much the labour of the teacher is increased, when his object is to make the general views and inductions of a science familar to minds that are but imperfectly acquainted with the facts on which these general conclusions rest. Having said so much with the view of conciliating your indulgence to the imperfections and omissions which, I am well aware, will be but too obvious in this first attempt, I shall only add, that no exertion shall be wanting on my part to render those lectures instructive and practically useful.

I intend to divide the entire course into three parts. In the first, my object will be to communicate such information respecting the situation, structure, functions, and some diseases of the chief organs of the body, as is absolutely requisite to render the subsequent parts of the course intelligible. The heart, the fountain itself of life, may first engage our notice. The importance of this

organ in the animal economy ; the nature of its functions ; the curious and beautiful mechanism by which it is at once adapted to perform during intra-uterine life, the simpler office of receiving the blood from the mother, to transmit it to the child, and prepared to take on at birth the double duty of sending it first to be vivified by respiration in the lungs, and afterwards distributing it throughout the system ; the frequency of disease in the organ itself, and in the large vessels ; the obscure, insidious, often latent character of some of those diseases, as well as the suddenness with which they frequently terminate life ; all deserve attention in reference to many medico-legal investigations.

A knowledge of the nature of the respiratory function, and of the structure and chief diseases of the respiratory organs, will be found equally useful. I have already alluded to this in connexion with infanticide, and shall only observe here, that the fatal character of certain diseases of those organs, together with the certainty with which they can be recognized by means of the stethoscope, give them a peculiar interest in reference to the subject of life insurance.

The numerous and important organs that constitute the digestive system—the stomach, intestines, liver, spleen, &c., will require and repay an attentive consideration. It is in the stomach, for example, we seek for evidence in one of the most common forms of crime—poisoning ; and it is important you should not be ignorant of the diseases that simulate some in their symptoms, and some in their terminations, the effects of poison on that organ.

Some knowledge of the generative system is absolutely necessary, in order to understand the nature of the offences, and the numerous inquiries connected with abortion, concealment of the birth, infanticide, violation, and others.

And I need scarcely insist on the importance of an acquaintance with that system that presides over and regulates all the others, and which, in the derangement of its highest function, gives occasion to some of the most

difficult and important investigations in medico-legal practice.

With this preliminary information, you will come prepared to comprehend the use and importance of medical testimony in judicial proceedings, as well as the errors and fallacies to which it is liable. In treating this part of the subject, I will adopt, as far as possible, an arrangement founded on legal principles, and consider, in the first place, the medical proofs in offences against the person—as murder, manslaughter, assaults, and procuring abortion; and then proceed to examine the evidence in cases of disputed legitimacy—feigned and suspected pregnancy—impotence and sterility—life insurance—unsoundness of mind, and public nuisances. Each will require a distinct consideration; as the nature of the medical evidence, and its object, are in some respects different in all. Thus, in suspected or feigned pregnancy, it testifies to a fact to be recognized only by the aid of medical science. In assaults, it measures the amount of injury. In rape, it sustains or invalidates direct evidence itself; and in its most interesting applications it forms a part—and in general a most important part—of a chain of circumstantial evidence, where direct evidence is not attainable—as in secret murders, attempted assassinations, poisoning, and similar crimes. I may here observe, that it is in this last class of cases medical science has achieved its most signal triumphs, and conferred upon the administration of justice the most striking, if not the most important benefits. And perhaps I could not, in a single lecture of this kind, better give you some notion at once of the nature of medical evidence, and of the importance of medical knowledge to all concerned in such investigations, than by directing your attention to a few of those remarkable instances. They are to be met with chiefly in the judicial records of other countries, and especially of France and Germany; not that similar cases do not occur at home; but from the neglected—I might almost say despised—state of medical jurisprudence amongst ourselves, and the consequently imperfect and bungling manner in which medico-legal inquiries



are conducted, the crafty criminal I fear frequently escapes detection and punishment. [Dr. Brady here briefly detailed some cases which have very lately occurred in England, and which went to sustain strikingly this conjecture—such as the case tried before Lord Abinger, and referred to in the article on “Insurances,” in the last number of the *Quarterly Review*—in which it appeared that a young woman, with no other property but ten pounds a year, living in London with her brother-in-law, a person also of small means, had succeeded in effecting insurances on her life for two or three years, for so large a sum as £16,000. This took place in November. Some time in December she went to the theatre in perfect health, accompanied by the brother and sister-in-law—took some refreshments on her return—went to bed, from which she never rose. On a *post mortem* examination, great effusion was found on the brain, caused by extraordinary violence of vomiting—the consequence, it was stated, of some powders given by her sister-in-law. The brother-in-law applied as *trustee* for the amount of two of the policies that had been assigned to him, but the offices having refused payment, he took the alarm, and went with his family to the Continent.]

At Paris, in 1832, the body of a man was found in the Seine, cut into four parts. Being placed in the Morgue, the medical inspector remarked that at the different sections the skin and muscles were much contracted, as occurs when a part is divided during life; and on further examination, he also found that the heart and blood-vessels were empty, and the system generally was drained dry. He was thence led to conjecture that the body must have been divided before life was extinct; and furthermore, from the appearance of the incisions, and the absence of other injuries, that the individual had been in a condition that disabled him from making any resistance. This induced him to pay particular attention to the stomach; and by a careful analysis, he detected prussic acid in its contents. A clue was thus afforded to the murderer, who was soon after discovered. Some of this poison was found in his



room. He was convicted and executed—having confessed that he had first rendered his victim insensible with prussic acid, and then cut his throat, and immediately after cut up the body.

A body divided into two parts was taken out of the Loire. It was divided exactly through the cartilage, between the third and fourth lumbræ vertebræ, and there were besides several wounds in the abdomen. From the manner in which the division was effected, the examiner, Dr. Ouvrad, concluded it had been done by some person accustomed to such an operation; and as the wounds in the belly proved the man had been murdered, he conjectured that the murderer was probably a butcher. This proved true. The criminal was discovered, convicted, and executed.

I have cited these cases, not only as examples of the assistance medical science is capable of affording to the administration of justice, but as shewing that this assistance is often of a kind with which persons who have not attended to the subject are but little familiar. I will now briefly refer to two other cases, which even more strikingly exemplify this.

In 1823, a soldier named Bonino suddenly disappeared from a village near Montpellier, where he had for some time lived. Suspicion fell upon a paramour of his, and a man whom she subsequently married; but no investigation took place for three years after; when the magistrates having directed a search, a body was found in the garden of the suspected persons. After a careful examination of the remains of the body—all the soft parts of which, except the vertebral ligaments, were destroyed—Dr. Delmas was able to arrive at the following conclusions: that the individual had been a male, of the age of forty or upwards, and had six fingers on his right hand, and possibly a sixth toe on the left foot; (it was ascertained that Bonino had these peculiarities, and that he was forty-six years of age); that he had been murdered by a blow of a blunt weapon, which fractured the left temporal bone; and that he had been buried in his clothes. The husband and wife were tried

and convicted; and before their execution confessed they had committed the murder in the manner described by Dr. Delmas.

A still more extraordinary investigation was conducted by Orfila, Marc, Chevallier, and other distinguished medical jurists, in Paris, a few years since. So far back as 1821, a widow lady of the name of Houat, residing in Paris, had suddenly disappeared. Two men and the wife of one of them were arrested on suspicion of having made away with her; but for want of evidence at the time, they were liberated. Eleven years after, a report reached the police of a body having been buried in a certain garden about that time. The body was found, and after a most skilful and able examination of its remains by the medical men, the following facts were satisfactorily established:

1st. That the skeleton was that of a female, sixty or seventy years of age, and nearly five feet in height.

2nd. That the hair, which was bright blond in youth, was mixed with gray at her death.

3rd. That the hands were small.

4th. That she died of strangulation, and that the act was to all appearance homicidal.

5th. That the body must have lain in the earth for several years.

The prisoners, who had been long suspected, were brought to trial twelve years after the murder, and convicted.

These are striking examples of the important aid the administration of justice may derive from medical skill and knowledge. They almost lead one to hope that science may one day realize the blind belief of the vulgar, and render it impossible murder can be hid. Less remarkable, but not less useful instances of the value of medical evidence are of every-day occurrence, and of late years are not unusual even in those countries. The case of Bowerman, which was first reported in Paris and Fonblanque's work on "Medical Jurisprudence," and which you will find referred to by Mr. Phillips, and other writers on evidence, is a good illustration.

Three years after the death of a step-child of his, a report was set on foot that he had killed the child, by pushing an awl into its head, just behind the ear. The coroner was induced to have the body disinterred, and on examination, a small round hole was found in the skull, corresponding exactly with the account of the murder given by a witness. The coroner's jury returned a verdict of wilful murder against Bowerman, and at the next assizes of Exeter, a bill was sent to the grand jury against him. In the mean time, however, Mr. Sheldon, a surgeon in Exeter, having investigated the case, found that the hole in the skull was the natural opening for a blood-vessel, which was obvious, as well from the nature of its edges, as from a little channel which led to it; and having pointed this out to the jury, and produced before them a dozen skulls similarly perforated, the bill was ignored.

A few years since, an officer of excise was tried in Kent for shooting a man. The deceased had been, for some purpose or other, in company with a band of smugglers, and was retreating before the officer when he was shot. There was no doubt the officer had fired, but the smugglers, on their retreat, had also fired several shots; and a surgeon made it plain, from the direction and nature of the wound, that the ball must have entered in front, and therefore have come from the smugglers, and not from the prisoner.

Some years since, a Mr. Hodgson, a surgeon, was tried at Durham, for attempting to poison his wife, and the case affords an interesting illustration of the value of medical evidence. She had been ordered by a physician pills of calomel and opium for rheumatism; and it was pretty clearly proved that the prisoner, who kept a shop, and compounded the medicines himself, had substituted corrosive sublimate (a violent poison) for the calomel. When the wife began to suffer from the pills, the physician was sent for, and ordered a laudanum draught, which the prisoner himself immediately prepared; but the doctor, happening to observe that it was muddy, was induced to taste it, and recognized the peculiar acrid taste of cor-



rosive sublimate. The prisoner, in his defence, alleged that he had mistaken for the water bottle an injection of corrosive sublimate he had prepared for a sailor. But by chemical analysis, it was ascertained that the injection contained *five grains* of corrosive sublimate to an ounce of water, while the draught for the wife contained *fourteen grains*.

In the last case which I intend to cite, medical knowledge was equally successful, in a somewhat similar way, in defeating a conspiracy to impute the crime of poisoning. A man of the name of Whally was tried at the assizes of York for administering arsenic to a woman who was pregnant by him. She swore that the prisoner, after twice trying to prevail on her to take drugs, for the purpose of procuring abortion, sent her a present of tarts, of which she ate one and a half, and in half an hour after was seized with symptoms of poisoning. Mr. Thackrah, an intelligent surgeon at Leeds, who was called to see her, found arsenic in the tarts that remained, and also in the matters vomited at different times ; but he remarked, that her appearance did not correspond with the complaints she made of suffering ; her pulse and tongue were natural, and on careful investigation, the following inconsistencies appeared :

1. She said she felt a coppery taste on eating the tart, a taste which arsenic certainly has not.

2. From the quantity of arsenic in the tarts that remained, she could not have taken above ten grains, while after repeated vomiting, the last matter vomited contained fifteen grains.

3. The time at which these fifteen grains were alleged to have been vomited, was not till two or three hours after the symptoms began ; in which case, the symptoms would have been violent before that time.

The prisoner was acquitted, and the prosecutor and another woman, who had corroborated her testimony, subsequently confessed they had agreed to impute the crime to him, because he had deserted her.

But while the utility and importance of this kind of

evidence are too apparent to be questioned, it must be equally obvious, that the duty of a medical witness is often extremely difficult, and requires very great knowledge, experience, judgment, and discretion ; insomuch, indeed, that even able members of the Profession have fallen, in such circumstances, into the most dangerous errors. There is no real security to the public against those errors, except in the intelligence and education of the barrister. If the bar be incapable of estimating aright the weight and value of medical evidence, one or other of two consequences necessarily follows—either this evidence is neglected, and kept altogether out of view, or, if acted upon, it is as likely to damage as to serve the ends of justice.

I have already said, that each of the subjects which I propose to include in this course will require a distinct and separate consideration. I may add, that it will be expedient to enter into each at greater length, and with more detail, than probably you at first sight might consider necessary. Thus, in treating of murder, it will be necessary to consider the various modes in which it may be effected ; as, by hanging, strangling, suffocation, shooting, stabbing, poisoning, and, at the same time, the different kinds of sudden death from natural causes, which may be mistaken for the results of violence. And so, in speaking of assaults, we will have not only to attend to the different nature of the injuries inflicted, but also of the different circumstances that alter their character and aggravate their danger ; as intemperance, neglect, mismanagement, the supervention of prevalent diseases. The same may be said of abortion, and indeed of almost every subject included in the course.

In treating each of these divisions, I will follow, as far as possible, the same course. Thus having reminded you of the state of the law on the subject, and the evidence required in each case, I will proceed to consider the medical proofs that may be necessary. These I will examine in detail, explain the nature and object of each, and endeavour to enable you to form an estimate of their relative

value and importance. The various fallacies to which they are liable will next engage our attention, as well as the resources science supplies for guarding against and making allowance for those fallacies. When medical opinions are founded on experiments, I will, whenever it is practicable, repeat those experiments before you, and show you exactly how medical men, in such cases, arrive at their conclusions.

Even from the very imperfect outline I have sketched of this course of study, it must be obvious that it ought to constitute an essential part of the education of every barrister. The information thus acquired will be found alike necessary to him in every part of his professional career ; as well, perhaps, the first circuit he goes, and the first brief he holds, as when he has reached the highest place in his Profession ; as well in a simple case of assault, as in the most complicated inquiries connected with legitimacy, lunacy, or life insurance. The want of such information must be every day more and more sensibly felt by the members of the bar ; inasmuch as from the zeal with which medical jurisprudence is now cultivated by the medical profession, the evidence it supplies will be more frequently appealed to, and must have a great influence in legal proceedings ; and, besides, the very arts that civilize and refine multiply the offences, for the detection of which scientific skill is required. The same science that provides a remedy against pain and suffering, arms the hand of the murderer with his most deadly weapon. But it is not merely to the practising barrister that this information is essential. To the judge—the magistrate of every order—the members of the legislature—to all, indeed, who are concerned in making or in administering the laws, it is almost equally necessary for the proper discharge of their important duties. The Profession to which you belong is the portal to all those places of power, honour, and emolument. In that Profession knowledge and industry are almost sure to attain distinction and pre-eminence. It may be said men have risen to eminence at the bar without the aid of lectures, or the laborious study



we now propose. No doubt ; but the bar was not then as now, filled to overflowing ; and besides, there is a period in all professions when learning is almost an incumbrance, while superficial and showy attainments gain, as if from their very levity, the highest places. But that day is past for the bar of Ireland, and he who now hopes to rise by his own exertions must be resolved to study, to labour, to learn. There are, indeed, other modes of rising or getting on in the Profession—the favour of Government, or the influence of party. But the favour of Government is a doubtful, and often a dangerous dependence ; and at the best, while he, who enters the Profession looking to its aid, is stopped by some gilded bauble that is flung across his path, his competitor, who relies upon himself, passes him in the race, and gains the prize. Look at the men who have risen to eminence, and who adorn, by their learning and ability, your Profession both in this country and in England. Have they not been almost invariably the architects of their fortunes ? Was it not by long laborious study they built up their solid and enduring fame ? Power sought them—they did not hang upon power ; and in their high and influential stations they have the proud and cheering consciousness that Governments could only circulate in a wider and more useful sphere than which the public had already stamped as pure and genuine. But to rely on the influence of party in a Profession such as yours, that demands for the discharge of its high duties the most stainless integrity, the most unbending rectitude, and the most fearless independence ; to seek to advance by becoming the mouth-piece through which the passions, the prejudices, and the malignant feelings of the crowd—whether the high or the lowly born—are to have vent ; or by being bound to the chariot and serving to swell the triumph of a political leader, is the most abject condition to which an educated man can possibly degrade himself.

“ Infelix puer ———

———— huic cervixque comæque trahuntur

Per terram, et versa pulvis inscribitur hasta.”

But there is no fear for the Irish bar. Some may choose those dark and slippery paths ; but difficult and dangerous to public virtue as is confessedly the position of the Profession in this country, they are difficulties and dangers that every day will abate ; and I cannot bring myself to believe that there will be found many who aspire to station at the bar, to prefer a dependence on party that degrades, or Governments that mock expectation, rather than upon their own honest exertions—upon that self-reliance that invigorates, and that love of honourable distinction that ennobles all our efforts.



















































































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